

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JUSTIN J. EDMISTON,

Case No. 3:20-cv-00559-RCJ-CLB

Plaintiff,

ORDER

v.

STATE OF NEVADA EX REL IN AND  
FOR NEVADA DEPARTMENT OF  
CORRECTIONS et al.,

Defendants.

This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 1). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on September 7, 2021. (ECF No. 4). A follow-up order imposed a 90-day stay and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 6, 8). The Office of the Attorney General has filed a status report indicating that settlement has not been reached and informing the Court of its intent to proceed with this action. (ECF No. 12).

During the 90-day stay and after the inmate early mediation conference, Plaintiff submitted a first amended complaint (ECF No. 10) which Defendants move to strike (ECF No. 11). The Court grants the motion to strike the first amended complaint because Plaintiff filed it in violation of the stay. The Court previously ordered that, “until the Court lifts the stay, no other pleadings or papers may be filed in this case, and the parties may not engage in any discovery, nor are the parties required to respond to any paper filed in violation of the stay unless specifically ordered by the court to do so.” (ECF No. 6 at 2).

The Court further notes that if it accepted Plaintiff’s first amended complaint, the Court would need to recommend dismissing this action with prejudice as amendment

1 would be futile. In the first amended complaint, Plaintiff only seeks to raise a claim under  
2 the Prison Rape Elimination Act of 2003 ("PREA"), 42 U.S.C. § 15601. (See ECF No. 10  
3 at 3). However, PREA does not create a private right of action. See *Law v. Whitson*, 2:08-  
4 CV-0291-SPK, 2009 WL 5029564, \*4 (E.D. Cal. Dec. 15, 2009). PREA was enacted to  
5 study the problem of prison rape and to authorize the reporting of incidents of rape but  
6 nothing in the Act creates a private right of action enforceable under § 1983. *Id.*; *Trost v.*  
7 *Cox*, 3:14-CV-611-MMD-WGC, ECF No. 3, \*9 (D. Nev. April 10, 2015).

8 For the foregoing reasons, **IT IS ORDERED** that:

9 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is  
10 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In  
11 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28  
12 U.S.C. § 1915(b)(2).

13 2. The movant herein is permitted to maintain this action to conclusion without  
14 the necessity of prepayment of any additional fees or costs or the giving of security  
15 therefor.

16 3. Pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation Reform  
17 Act, the Nevada Department of Corrections will forward payments from the account of  
18 **Justin J. Edmiston, #1047583** to the Clerk of the United States District Court, District of  
19 Nevada, 20% of the preceding month's deposits (in months that the account exceeds  
20 \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of the Court  
21 will send a copy of this order to the Finance Division of the Clerk's Office. The Clerk will  
22 send a copy of this order to the attention of **Chief of Inmate Services for the Nevada**  
23 **Department of Corrections**, P.O. Box 7011, Carson City, NV 89702.

24 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and  
25 a copy of Plaintiff's complaint (ECF No. 5) on the Office of the Attorney General of the  
26 State of Nevada by adding the Attorney General of the State of Nevada to the docket  
27 sheet. This does not indicate acceptance of service.  
28

1           5.       Service must be perfected within ninety (90) days from the date of this order  
2 pursuant to Fed. R. Civ. P. 4(m).

3           6.       Subject to the findings of the screening and follow-up orders (ECF Nos. 4,  
4 6), within twenty-one (21) days of the date of entry of this order, the Attorney General's  
5 Office shall file a notice advising the Court and Plaintiff of: (a) the names of the defendants  
6 for whom it accepts service; (b) the names of the defendants for whom it does not accept  
7 service, and (c) the names of the defendants for whom it is filing the last-known-address  
8 information under seal. As to any of the named defendants for whom the Attorney  
9 General's Office cannot accept service, the Office shall file, under seal, but shall not serve  
10 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such  
11 information. If the last known address of the defendant(s) is a post office box, the Attorney  
12 General's Office shall attempt to obtain and provide the last known physical address(es).

13           7.       If service cannot be accepted for any of the named defendant(s), Plaintiff  
14 shall file a motion identifying the unserved defendant(s), requesting issuance of a  
15 summons, and specifying a full name and address for the defendant(s). For the  
16 defendant(s) as to which the Attorney General has not provided last-known-address  
17 information, Plaintiff shall provide the full name and address for the defendant(s).

18           8.       If the Attorney General accepts service of process for any named  
19 defendant(s), such defendant(s) shall file and serve an answer or other response to the  
20 complaint (ECF No. 5) within sixty (60) days from the date of this order.

21           9.       Plaintiff shall serve upon defendant(s) or, if an appearance has been  
22 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other  
23 document submitted for consideration by the Court. If Plaintiff electronically files a  
24 document with the Court's electronic-filing system, no certificate of service is required.  
25 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff  
26 mails the document to the Court, Plaintiff shall include with the original document  
27 submitted for filing a certificate stating the date that a true and correct copy of the  
28 document was mailed to the defendants or counsel for the defendants. If counsel has

1 entered a notice of appearance, Plaintiff shall direct service to the individual attorney  
2 named in the notice of appearance, at the physical or electronic address stated therein.  
3 The Court may disregard any document received by a district judge or magistrate judge  
4 which has not been filed with the Clerk, and any document received by a district judge,  
5 magistrate judge, or the Clerk which fails to include a certificate showing proper service  
6 when required.

7 10. This case is no longer stayed.

8 11. The motion to strike the first amended complaint (ECF No. 11) is granted.  
9 The Clerk of the Court will strike the first amended complaint (ECF No. 10) from the  
10 docket.

11 DATED THIS 19th day of January 2022.

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14 UNITED STATES MAGISTRATE JUDGE  
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